

AR/UOF# #2014-43**USE OF FORCE ADMINISTRATIVE INSIGHT REPORT**Date of Incident: 05/15/2014 Location: 953 Ellen Lane, El Cajon

Arrestee/Subject Information				
Name	Sex	Age	D.O.B	Case#
Jose Alberto GARCIA	M	34	03/13/1980	14004264

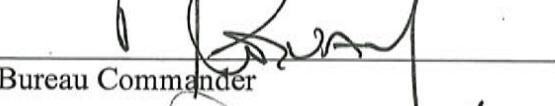
Officer/Employee Information		
Name	ID#	Division/Shift
Off. Nick Sprecco	252	Investigations
Off. Brandon Stanley	313	SED
Off. Robert Winning	186	Patrol

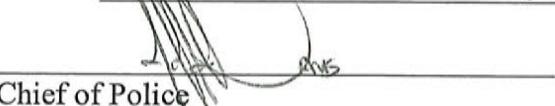
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Actions by Arrestee/Subject		Type of Force Used by Officer
Refusal to submit to detention/custody by passive resistance.		Use of ASP Baton as pain compliance device.
Refusal to submit to detention/custody by active resistance, touching, grappling, struggling, etc.		Use of Conducted Energy Device (TASER).
X Verbally threatened/challenged officer.		Use of Chemical agents to include OC spray.
Assumed threatening/fighting stance.		Use of carotid restraint.
Ran from detention/custody.		Physical force resulting in injury to officer or suspect, or where medical attention is required as a result.
Physically assaulted officer with hands, feet, body.		Use of Police Dog where there is a bite injury or complaint of injury.
Use or threatened use of impact weapon. Specify weapon:		Use of Baton or other impact weapon where the suspect has been struck
Use or threatened use of edged weapon. Specify weapon:	X	Use of Flexible Baton.
X Use or threatened use of firearm or replica firearm. Specify weapon: <u>Handgun</u>	X	Use of Firearm when discharged.
Other action. Specify:		Other action. Specify:

UOF: Within Policy X Other


Watch / Division Commander



Bureau Commander
Action: Concur w/ Review


Chief of Police

Attach narrative description of incident.

12/4/15

Date

12/4/15

Date

12/08/15

Date

Action: USE OF FORCE APPLIES TO BE WITHIN DEPT GENERAL ORDERS GUIDELINES

Watch Commander Summary of how force was used, whether force was used within policy and recommendations for further action if appropriate:

On 5/15/14 at 0652 hours, the El Cajon Police Department received a call from [REDACTED] reporting that her estranged husband Jose Alberto GARCIA was at her front door at 953 Ellen Lane in El Cajon. She said her husband was demanding to see their children and he was armed with a gun.

Officers Stanley, Roberts, Michael, and Pak were the first officers to arrive on scene. Officer Stanley made verbal contact with GARCIA, who was standing in the driveway. Officer Stanley advised GARCIA was not complying with his instruction and was holding a handgun. He requested emergency cover and a less lethal beanbag shotgun be brought to his location. Officer Stanley continued to negotiate with GARCIA and noted that he appeared to be intoxicated due to his slurred speech and was drinking a beer.

Additional El Cajon Police Officers and Detectives respond to the scene and conducted evacuations. Officer's Wining and Pittsley positioned themselves behind a small vehicle directly west of the residence. Officer Wining was armed with an AR/15 rifle. Officer Pittsley was armed with a 40 millimeter less lethal launcher loaded with "Sponge Rounds".

The Crisis Negotiations Team and SWAT Team were also activated and responded to the scene. The Crisis Negotiations Team arrived and took over negotiations.

The SWAT Team arrived and took over the scene containment. They positioned the armored Bearcat vehicle in front of the residence. Officer Stanley, who is a member of the SWAT team, took up a position in the turret of the vehicle armed with an M4 rifle. Officer Sprecco deployed into an adjacent residence at 945 Ellen armed with a M4 rifle and had a clear view of Garcia and his actions.

As the incident progressed Garcia became more agitated. He demanded the officers leave or he would kill himself. Officers advised Garcia had put the gun into his mouth and then removed it to chamber a round in his gun. He continued to act irrational and began point the gun in the directions of officers at the front of the residence.

Officer Sprecco requested a tactical plan to have a less lethal weapon be used. Officer Pittsley advised he was in position to deploy a 40mm less lethal sponge rounds at Garcia. Officer Pittsley fired one 40 mm less lethal sponge round striking Garcia in the upper torso with little effect. Officer McDaniel said he saw Garcia pointing his handgun at officers and pulled the trigger. He advised the weapon misfired. Officer Conely advised Garcia had chambered another round and began to point the firearm again in the direction of the officers in the front of the residence. Garcia was shot by officers and taken into custody without further incident. He was transported by El Cajon Fire Paramedics to the Sharp hospital for treatment of his injuries and is listed in stable condition.

Watch Commander Summary of how force was used, whether force was used within policy and recommendations for further action if appropriate:

This incident was turned over to Detectives for their investigation. For detailed account of this incident see case 140042664.

General Order 15.1 states the officer shall choose the available force option, which is reasonable and necessary to effectively establish control of the situation. Clearly, good judgment and the specific circumstances of each situation will dictate which option(s) an officer chooses.

In this case Garcia's was acting in violent and irrational manner. His intent was clear he did not want to peacefully resolve this incident. Garcia frequently pointed his handgun at officers and himself. Garcia refused to comply with numerous instructions to surrender but instead chose to point his handgun at officers and pulled the trigger. When the gun appeared to misfire he was shot with a 40 mm less lethal sponge round, and again refused to surrender. Garcia cleared the malfunction to his weapon to make it functional and again pointed his gun at officers. The officers fearing for their safety and the safety of others used deadly force to stop Garcia.

The Officers involved in this incident did an excellent job of communicating their tactics with each other. They demonstrated immense restraint to attempt to resolve this incident peacefully, only using deadly force to defend themselves and other officers.

Based upon these circumstances, the use of force was reasonable and within department policy, as defined in General Order 15.

This case was reviewed by San Diego County DA Bonnie Dumanis and on 10/6/15 she wrote in a letter which is attached to this report the following, "Based on these circumstances, it is readily apparent Officers Sprecco, Stanley and Wining fired at Mr. Garcia in defense of themselves and other officers. They therefore bear no criminal liability for their actions."

OFFICE OF
THE DISTRICT ATTORNEY
COUNTY OF SAN DIEGO

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BONNIE M. DUMANIS
DISTRICT ATTORNEY

<http://www.sandiegoda.com>

October 6, 2015

Chief James Redman
El Cajon Police Department
100 Civic Center Way
El Cajon, CA 92020

J
10-13-15

Re: Non-fatal shooting of Mr. Jose Alberto Garcia on May 15, 2014 by El Cajon Police Officers Nicholas Sprecco, Darren Ehlers, and Robert Wining; El Cajon Police Department Case No. 14004264; DA Special Operations Case No. 14-050PS; Deputy District Attorney assigned: David T. Grapilon

Dear Chief Redman:

We have reviewed the reports and other materials compiled by your agency's Crimes of Violence Unit concerning the non-fatal shooting of Mr. Jose Alberto Garcia by El Cajon Police SWAT Officers Nicholas Sprecco, Brandon Stanley, and Robert Wining on May 15, 2014. A District Attorney Investigator responded to the scene and was briefed by El Cajon Police investigators. This case was presented to the District Attorney's Office for review on January 20, 2015.

Synopsis

SWAT Officers Sprecco, Stanley, and Wining responded to a 911 call from [REDACTED]. [REDACTED] reported her estranged husband, Mr. Jose Alberto Garcia, was armed with a handgun and was demanding entry into their home. Officers attempted to negotiate with Mr. Garcia. After a prolonged standoff, Garcia pointed a handgun at officers and pulled the trigger. The weapon misfired. Garcia racked another round of ammunition into the chamber and was shot twice by officers. Garcia was transported to the hospital and survived his injuries.

Persons Involved

Mr. Jose Alberto Garcia was 34 years-old at the time of this incident and resided in the City of El Cajon.

Detective Sprecco had been a full-time police officer for 13 years when this incident occurred. Sprecco was in plain clothes, wearing a police tactical vest. Officer Stanley had been a full-time police officer for six years. Stanley was in full uniform and assigned to patrol duties. Officer Wining had been a full-time police officer for 13 years. Wining was in full uniform and also assigned to patrol duties. All three were SWAT officers.

Background

██████████ said she met her husband, Jose Garcia, in high school and married in 2005. She separated from him in November of 2012 because he was verbally and physically abusive to her. ████████ allowed Jose to move back into their home around December of 2013.

Four days prior to the shooting incident, ████████ said she and Jose Garcia had an argument at their home after her husband struck her in presence of their two daughters, ages 7 and 9. ████████ said she threatened to call the police. Jose grabbed her cell phone from her hand and tossed it into the neighbor's yard. Jose poured a caustic chemical acid on her and chased her throughout the house. ████████ hid in a closet until Jose left.

On the morning of May 15, 2014 at approximately 7:00 a.m., Jose Garcia returned home and knocked on the door. ████████ answered but stayed behind the locked metal security door. Jose demanded to see their children. Jose appeared intoxicated and lifted up his sweater, exposing a handgun tucked in his waistband. ████████ told Jose he was drunk and asked him to leave. She closed the door and dialed 911. Jose repositioned his pickup truck in the driveway and parked it directly in front of the entry to the house and garage. He turned up the volume on his truck's radio. Jose banged on the front door of the house and once again demanded to see his daughters. ████████ and her daughters hid in the back bedroom until the police dispatcher instructed her to exit via a back door. A police officer met with ████████ and the children at the neighbor's backyard and escorted them to safety.

Officer-Involved Shooting

Several police officers arrived at the front of the residence and saw Mr. Garcia standing in the driveway next to his truck. Officers saw Garcia holding a pistol in his hand. For the next hour and twenty minutes, officers attempted to negotiate with Garcia to surrender. Garcia told officers to shoot him. Garcia would point the pistol at himself and threaten to end his life. He would then waive the gun in the direction of officers deployed in front of his house and across the street. An officer fired a less-than-lethal sponge projectile and struck Garcia, but it had little effect. Garcia again pointed his pistol in the direction of officers deployed across the street. Garcia pulled the trigger but the weapon misfired. Garcia pulled the slide back and chambered another round. Garcia fired a round into the ground in front of him. SWAT Officers Sprecco, Stanley, and Wining fired their weapons striking Garcia in the chest. Garcia fell and crawled into the open garage. Several more sponge rounds were fired at Garcia to confirm he was incapacitated. Officers approached and called for medical assistance. Garcia was transported by ambulance to Sharp Memorial Hospital and was treated for his injuries. Garcia recovered and was booked into the County Jail.

Detective Sprecco's Statement

Officer Sprecco was positioned in a neighbor's residence, directly to the north of Mr. Garcia. Sprecco saw Garcia was armed with a semi-automatic handgun. Sprecco said he did not focus on what Garcia was saying to the negotiators. Sprecco was more focused on the gun in Garcia's right hand. Garcia stood in the driveway of his home and had been pacing within that area. Garcia moved toward the driver's side of his pickup truck, which faced away from the street.

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Garcia pointed the gun at officers in the street. Garcia then pulled the slide back on his gun to chamber a round. Sprecco said there was no doubt this overt movement meant Garcia was going to shoot a police officer. That was when Sprecco decided to shoot Garcia.

Officer Stanley's Statement

Officer Stanley was positioned in the turret of an armored police vehicle. The armored police vehicle was parked in the street, northwest of Garcia's driveway. Stanley said he saw Mr. Garcia was armed with a semi-automatic handgun. Stanley saw Garcia place the barrel of his own pistol in his mouth and heard the click of the trigger being pulled. Stanley realized Garcia was now willing and committed to pulling the trigger. Stanley saw and heard Garcia chamber another round of ammunition by pulling the slide back and releasing it. Garcia then pointed his pistol at Officers Wining and Pittsley who were directly across the street from Garcia. Stanley then made the decision to shoot Garcia.

Officer Wining's Statement

Officer Wining was positioned behind a parked car across the street from Mr. Garcia. Wining was next to Officer Pittsley. Wining saw Garcia standing in the driveway near his parked pickup truck. Garcia asked officers to shoot him on several occasions. Pittsley eventually shot Garcia with a less-than-lethal sponge round, which did not incapacitate Garcia. Garcia then pointed his pistol directly at Wining and Pittsley. Wining said he heard Garcia pull the trigger on the pistol but the weapon did not fire. Wining heard the click of the trigger being pulled. Garcia racked a round into the chamber of his pistol. Wining broadcast over the radio that Garcia was pulling the trigger. Wining temporarily lost sight of Garcia and heard a gunshot. Believing that Garcia was shooting at him and Pittsley, Wining returned fire. Wining saw Garcia crawl into his garage. Wining and Pittsley moved forward toward Garcia. Wining said he and Pittsley moved in and took Garcia into custody.

Witness Statements

Investigators interviewed Garcia's neighbors. The majority of the neighbors retreated to portions of their residences furthest away from the police activity. Most neighbors only heard officers negotiating with Mr. Garcia and heard several shots fired. One neighbor, identified here as Neighbor #1, saw Mr. Garcia pointing his pistol, but could not make out who Garcia targeted. Neighbor #1 saw Garcia being shot with a bean bag round which appeared to stun him, but didn't bring him down. It appeared to make Garcia angrier. Neighbor #1 heard more yelling and then heard shots being fired. Neighbor #1 did not see Garcia being shot.

Mr. Jose A. Garcia's Statement

Mr. Garcia was interviewed in his hospital room on June 2, 2014. Garcia told the interviewing detective he did not recall what happened because he was not sober on the day of the incident. Garcia told the investigator if he behaved in the manner described, it might have been due to his drinking. Garcia said he was sorry, apologized to the detective, and repeated he was not sober.

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Investigation

The crime scene was secured and an investigation was conducted by the Crimes of Violence Unit with the assistance of the San Diego County Sheriff's Crime Lab. Video data from police dash-mounted cameras as well as crime scene photographs, crime scene reconstruction reports, and audio recorded witness interviews were accessed for this review. The investigation determined Officer Sprecco fired his rifle three times. Officer Stanley fired his rifle eleven times. Officer Wining fired his rifle six times.

The investigation further determined Mr. Garcia's weapon was fully functional and loaded with eight rounds in the magazine and one round in the chamber at the time of this incident. Garcia fired his weapon once. One 9mm Luger casing was recovered from under Garcia's pickup truck. This was consistent with Garcia's location during the shooting. One expended 9mm bullet was recovered from the ground in front of Garcia's pickup truck. One fully-loaded Sig Sauer model P226, 9 mm semi-automatic handgun was recovered from the ground next to Garcia's feet.

Toxicology

Two vials of blood were taken from Mr. Garcia by Emergency Room staff at Sharp Memorial Hospital and seized by investigators with a search warrant. A toxicological examination revealed positive results for cocaine and benzodiazepine in Garcia's blood.

Criminal Filing

Mr. Garcia pled guilty to 2 counts of Penal Code section 245(D) (2) Assault with a Semi-Automatic Handgun on Police Officers. On June 24, 2015, Garcia was sentenced to serve eight years in state prison.

Legal Analysis

This review was conducted pursuant to the joint protocol between this office and all San Diego law enforcement agencies calling upon the District Attorney to conduct an independent assessment of the circumstances surrounding the use of deadly force. The review does not examine such issues as compliance with the policies and procedures of any law enforcement agency, ways to improve training or tactics, or any issues related to civil liability.

Under California law, peace officers may use deadly force to protect themselves from the threat of death or great bodily harm and to use reasonable force in making an arrest. California Penal Code section 835a allows an officer to use reasonable force to make an arrest and to overcome resistance by a person for whom he has reasonable cause to believe has committed a public offense. That section states the officer need not retreat or end his effort to make an arrest because of that person's resistance.

In accordance with Penal Code section 196, peace officers may use deadly force in the course of their duties under circumstances not available to members of the general public. Irrespective of any laws applicable to situations where peace officers use deadly force in accomplishing their duties, the law of self defense is available to any person. Homicide is justifiable in accordance

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with Penal Code 197 when resisting any attempt by a person to commit great bodily injury on or kill any person.

Conclusions

During this incident, El Cajon Police SWAT Officers Sprecco, Stanley, and Wining were called to secure a perimeter of a residence during negotiations with an armed and suicidal person. Mr. Jose Garcia was armed with a semi-automatic handgun. Instead of dropping the pistol and complying with the repeated orders of officers to surrender, Garcia pointed his weapon at officers and pulled the trigger. Garcia then hid behind his parked truck and loaded a live round into the chamber. Garcia pulled the trigger and fired into the ground. When Garcia fired his weapon, SWAT Officers Sprecco, Stanley, and Wining fired at Garcia. Garcia was struck by the gunfire and collapsed. He was transported to the hospital and survived his injuries.

Based on these circumstances, it is readily apparent that Officers Sprecco, Stanley, and Wining fired at Mr. Garcia in defense of themselves and other officers. They therefore bear no criminal liability for their actions.

A copy of this letter, along with the materials submitted for our review will be retained in our files.

Sincerely,

BONNIE M. DUMANIS

District Attorney

County of San Diego

By:


PAUL AZEVEDO

Deputy District Attorney

Chief, Special Operations Division

PA:jh

cc: Captain Jeff Arvan
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